

Office of the Attorney General
State of Tennessee

*1 Opinion No. 94-013
February 3, 1994

Conflict of Interest; 1993 Amendment to T.C.A. § 7-86-105(b)(1); Legality of
Appointment by County Executive of County Commissioner to E911 Communications
District Board of Directors

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QUESTION

What effect, if any, does the 1993 amendment to T.C.A. § 7-86-105(b)(1) have on
Op.Tenn.Atty.Gen. U93-21 (February 26, 1993)?

OPINION

The 1993 amendment to T.C.A. § 7-86-105(b)(1), providing that whenever that section requires a county legislative body to appoint directors for the board of an **emergency communications** district, the method of appointment shall be by the confirmation process as established pursuant to T.C.A. § 5-6-106(c), changes Op.Tenn.Atty.Gen. U93-21 (February 26, 1993) (copy attached). A county legislative body's power to confirm candidates appointed by the county executive, the procedure established by T.C.A. § 5-6-106(c), does not amount to a power of appointment in the county legislative body for purposes of common law conflict of interest principles. Therefore, a county legislative body may confirm the appointment made by the county executive of one of its own members to the **emergency communications** district board of directors, but the county legislative body member should abstain from voting on the confirmation of his or her own appointment.

ANALYSIS

The 1993 amendment to T.C.A. § 7-86-105(b)(1) added one sentence with relation to the appointment of a board of directors for an **emergency communications** district by a county legislative body, stating: "Whenever this section requires the county legislative body to appoint directors, the method of appointment shall be by the confirmation process as established pursuant to § 5-6-106(c)." T.C.A. § 5-6-106(c) reads as follows:

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Except as otherwise provided by general law, or special or private act, the county executive shall appoint members of county boards and commissions and county department heads. Such appointees shall be subject to confirmation by the county legislative body, and in so doing, the legislative body may express its views fully and freely and shall vote for or against confirmation. The legislative body shall not seek or interview such prospective employees prior to their appointment by the county executive. Such appointment and confirmation is not applicable to employees appointed by other elected county officials.

Taken together, these statutory provisions provide that where T.C.A. § 7- 86-105 requires the county legislative body to appoint members of the **emergency communications** district board of directors, the county executive shall name the appointees to the **emergency communications** district board of directors in the first instance. Those appointees shall be subject to confirmation in the same method as that applicable to members of county boards and commissions and county department heads through T.C.A. § 5-6-106(c), whereby the county legislative body shall vote for or against confirmation of the appointees named by the county executive.

*2 Op.Tenn.Atty.Gen. U93-21 opined that it was a conflict of interest for a member of the Monroe County Board of County Commissioners to serve as a member of the 911 **Emergency Communications** District Board of Directors because then-T.C.A. § 7-86-105(b)(1) gave the Monroe County Commissioners power to appoint the board of directors directly, and public policy would prohibit them from appointing one or more of their members to the board. The amendment to T.C.A. § 7-86-105(b)(1) changes the manner of appointment which supported the prior Opinion, and hence we now reach a different conclusion under current law.

The power to confirm appointments is different from the power to appoint for purposes of analyzing potential conflicts of interest under the common law rule enunciated in *State ex rel. v. Thompson*, 193 Tenn. 395, 246 S.W.2d 59 (1952), that it violates public policy for an appointing body to confer office upon one of its own members. This Office has opined that the county legislative body's power to confirm candidates appointed by the county executive does not amount to a power of appointment for purposes of the principles applied in *Thompson* and *State ex rel. Bugbee v. Duke* (Tenn., filed at Nashville, August 29, 1988), an unpublished opinion of the Tennessee Supreme Court. See Op.Tenn.Atty.Gen. U92-129 (December 14, 1992) (copy attached). Consistent with that Opinion and the analysis therein, a county legislative body member should abstain from voting on the confirmation of his or her own appointment.

Therefore, it is not a conflict of interest for the County Board of County Commissioners to confirm the appointment of one of its members to serve as a member of the 911 **Emergency Communications** District Board of Directors. The appointee County Commissioner should abstain from voting on the confirmation of his or her appointment to the **Emergency Communications** District Board of Directors.

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